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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group: 2841

Atty. Docket: 8266-0474

Applicants: Mobley et al.

Invention: LOAD CELL APPARATUS

Serial No.: 09/669,707

Filed: September 26, 2000

Examiner: Gibson, R.

Certificate Under 37 C.F.R. § 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231

on April 15, 2003

Norman J. Hedges
Typed or Printed Name Norman J. Hedges

Dated: April 15, 2003

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SECOND PETITION UNDER §1.103(a)
REQUESTING SUSUPENSION OF ACTION

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Introduction

A first Official Action on the present application was mailed April 5, 2002. An Amendment and Reply Under 37 C.F.R. § 1.111 was filed on October 7, 2002 replying to the first Official Action. A first PETITION UNDER §1.103(a) REQUESTING SUSUPENSION OF ACTION was requested on October 7, 2002 and granted by the Office. Thus, there is no outstanding reply due from the Applicant to an Official Action in the present application.

Notification

The Examiner is hereby notified that the period for the first suspension will expire on April 15, 2003. Furthermore, the examiner is notified that the Applicant is requesting further suspension of the present application.

Petition Fee

A check is enclosed herewith to cover the \$130 petition fee under §1.17(h). Please charge any additional fees or credits to the account of Bose McKinney & Evans, LLP Deposit Account No. 02-3223.

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Petition

The Applicant requests that action on the present application by the Office be delayed for another period of six (6) months.

Showing of Good and Sufficient Cause

The Applicant submits that suspension of action on the present application is necessary to permit the resolution of certain matters that the Examiner must review to determine the applicability of a rejection made in the first Official Action. In the first Official Action, claims 1-11 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17-28 of U.S. Patent No. 6,362,439 B1 to Reichow (hereinafter "Reichow"). As stated in the previous petition, the inventorship and ownership of Reichow were being challenged in a civil action.

The legal challenge to the inventorship and ownership of Reichow continues. Based on the resolution of the inventorship and ownership of Reichow, a double patenting rejection based on Reichow may or may not be applicable to the present application. Because these matters are currently unresolved, the requested suspension is believed necessary.

"Before consideration can be given to the issue of double patenting, there must be some common relationship of inventorship and/or ownership of two or more patents or application." MPEP 804. Reichow currently lists Keith Reichow as the sole inventor and Stress-Tek, Inc. as the sole assignee. The present application lists Donald L. Mobley, Steve A. Dixon, and Randall K. Hopkins as inventors. Hill-Rom Services, Inc. is the current assignee of the present application.

Currently, there is no recognized common relationship between the inventorship and/or ownership of Reichow and the present application. Thus, based on the currently recognized inventorship and ownership of Reichow and the present application, the present double patenting rejection is improper and should be withdrawn.

However, as detailed in the Amendment and Reply filed previously with the early petition, the inventorship and ownership of Reichow is currently being challenged in a complaint. This complaint may result in a conclusion that one or more of the inventors listed in the present application should also be listed as inventors of Reichow, which may ultimately result in the assignee of the present application having an ownership interest in Reichow.

The Applicant submits that during the requested suspension, the questions of inventorship and ownership of Reichow may be resolved. With this resolution, the


applicability of a double patenting rejection based on Reichow may be determined. Thus, the Applicant submits that good and sufficient reasons supporting the necessity of suspension of action of the present application has been provided. Furthermore, because the potentially lengthy time frame for resolving the inventorship and ownership of Reichow, the six (6) months requested for the suspension is also believed to be reasonable.

Conclusion

The Applicant submits that the requirements for granting the requested suspension have been met. In the event that there are any questions related to this request or to the application in general, the undersigned would appreciate the opportunity to address those questions directly in a telephone interview to expedite the prosecution of this application for all concerned.

Respectfully submitted,

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